

AGREEMENT FOR THE PROVISION OF A CLINICAL REVIEW FOLLOWING A DEATH IN PRISON OR APPROVED PREMISES

**TO THE
PRISONS AND PROBATION
OMBUDSMAN**

**BY
HEALTHCARE INSPECTORATE
WALES**

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1. Introduction

This agreement sets out the Prisons and Probation Ombudsman's (PPO) requirements for completion of a clinical review following a death in prison or approved premises by Healthcare Inspectorate Wales (HIW), and is made under section 83 of the Government of Wales Act 2006. HIW as the healthcare inspectorate arm of the Welsh Assembly Government, exercises functions of the Welsh Ministers. Through this agreement HIW will provide services that meet, or improve upon, the standard of service agreed with the PPO in terms of quality and timeliness.

In this agreement the PPO and HIW together will be known as the "parties".

This is a continuing agreement which will take effect from 1 April 2008. The agreement will be reviewed annually or whenever there are personnel changes.

Purpose of the Agreement

The purpose of this agreement is to ensure that both parties work together to:

- establish the circumstances and events surrounding a death in a Welsh prison, young offenders' institution (YOI) and probation approved premises; and
- examine whether any change in operational methods, policy, practice or management arrangements in prisons would help prevent a recurrence.

This agreement also clarifies the role and responsibilities of both parties in the clinical review process.

Common values/shared goals

The parties have a shared commitment to decency and fairness in custodial establishments, including prisons, young offenders' institutions and approved premises. There is also a mutual interest regarding judgments on the conditions for and treatment of those living in establishments where a death occurs.

2. Objectives of the PPO and HIW

The Prisons and Probation Ombudsman

The Ombudsman investigates the circumstances of the deaths of:

- Prisoners (including those held in contracted prisons, secure training centres and young offender institutions). This includes people who are temporarily absent from the prison but are still in custody (for example, under escort, at court or in hospital). It excludes persons released from custody, whether temporarily or permanently unless the Ombudsman uses his discretion.
- Residents of National Offender Management Service approved premises (including voluntary residents).
- Residents of immigration detention accommodation and persons under Immigration Service managed escort.

The aims of the PPO's investigation are to:

- Establish the circumstances and events surrounding the death, especially as regards management of the individual by the relevant Service or Services, but including relevant outside factors.
- Examine whether any change in operational methods, policy, practice or management arrangements would help prevent a recurrence.
- In conjunction with NHS organisations where appropriate, examine relevant health issues and assess clinical care.
- Provide explanations and insight for the bereaved relatives.
- Assist the Coroner's inquest in achieving fulfilment of the investigative obligation arising under article 2 of the European Convention on Human Rights, by ensuring as far as possible that the full facts are brought to light and any relevant failing is exposed, any commendable action or practice is identified, and any lessons from the death are learned.

Healthcare Inspectorate Wales

HIW's core responsibility is to undertake reviews and investigations into the provision of NHS funded care by or for Welsh NHS organisations, in order to provide independent assurance about, and to support the continuous improvement in, the quality and safety of Welsh NHS funded care. The frameworks of Clinical Governance and Healthcare Standards set by the Welsh Assembly Government are central to the way in which HIW assesses Welsh NHS organisations and Welsh NHS funded care. In this respect, HIW is committed to:

- strengthening the voice of patients and the public in the way health services are reviewed;
- working with others to improve services across sectors and agencies;
- working with other regulators/inspectionates to ensure that the public, NHS organisations and the Assembly receive useful, accessible and relevant information about the quality and safety of Welsh NHS funded care; and
- developing more effective and co-ordinated approaches to the review and regulation of the NHS in Wales.

HIW will ensure that skill, care and diligence are exercised in carrying out these services properly and efficiently in accordance with the agreement. HIW will keep the PPO informed of any foreseeable or actual changes in circumstances, which are likely to affect its ability to deliver the services specified.

HIW will arrange for staff of appropriate qualifications, skills and experience to provide the services identified in this agreement. The clinical reviewer will be independent of the provision of clinical care received by the deceased and will not have any management responsibility for its provision.

3. Principles of Delivery

Responsibilities of the PPO

The PPO will inform (by electronic and hard copy) HIW on the day of the notification of a death in a Welsh prison, YOI or approved premises, and wherever possible include the name of the lead investigator.

The PPO lead investigator will:

- provide HIW with a summary of the main clinical issues;
- forward a copy of the paperwork needed to complete the clinical review;
- supply additional records at the request of the clinical reviewer;
- contact the clinical reviewer and agree a joint approach to the clinical aspects of the investigation, including any specific questions asked by the family;
- notify the clinical reviewer of the dates that they will be in the establishment;
- determine the time scale for the review in consultation with HIW
- provide a copy of the post mortem report;
- check that any clinical terms have been correctly interpreted;
- provide a copy of the draft PPO report with an invitation to respond and comment within 20 working days;
- provide a copy of the final report in Welsh as well as in English;
- inform the reviewer of the arrangements for the inquest;
- publish a redacted version of the report on the PPO web-site after the inquest; and
- send a copy of the final report to HIW and the Welsh Assembly Government.

In addition, from time to time, the PPO reviews its policies and clinical review guidance. The PPO will consult HIW and ensure that any changes reflect the services in place in Wales.

Responsibilities of HIW

The HIW clinical reviewer will:

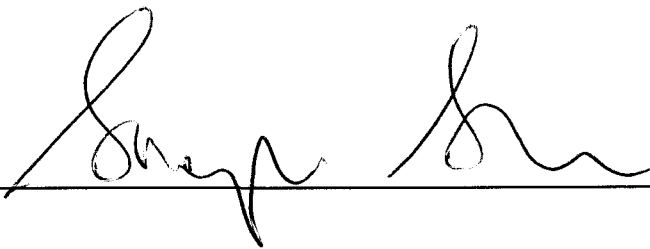
- provide the name and contact details for the clinical reviewer;
- contact the lead investigator to discuss the case and/ or arrange to meet to discuss the case and arrange joint interviews if required
- review the material and arrange, if necessary, a specialist reviewer to interview prison staff and assist with the clinical review report;
- request more material from the lead investigator if required;
- request to attend interviews with prison staff, to help inform the clinical review;
- advise on any matters regarding secondary NHS care of the deceased, including handling any concerns the family may have;
- brief the PPO lead investigator about the progress of the clinical review;
- prepare the draft clinical review in accordance with the PPO guidance. Where clinical language is used, a lay alternative will be provided; respond to any feedback from the family or the service which concerns clinical matters;
- send the final clinical review to PPO lead investigator for inclusion in the PPO report; and
- respond to the draft PPO report within 20 working days.

Recommendations about NHS care and commissioning will be followed up by HIW separately.

Signatories to the Agreement

The signatories to this agreement are the Prisons and Probation Ombudsman (on behalf of PPO) and the Chief Executive of Healthcare Inspectorate Wales (on behalf of the Welsh Ministers).

Signature: Prisons and Probation Ombudsman, Stephen Shaw


Date 13 / 11 / 2009

Signature: Chief Executive of Healthcare Inspectorate Wales, Dr Peter Higson on behalf of the Welsh Ministers


Date 06 / 11 / 2009

Officials responsible for the day-to-day management of the agreement are set out below. If no such person is listed the parties above retain day-to-day responsibility.

Jane Webb, Deputy Ombudsman, Fatal Incident Investigation Team, PPO
Mandy Collins, Deputy Chief Executive, HIW
Susan Beavis, Inspections Manager, HIW
Lesley Johnston, Inspections Manager, HIW

PPO TERMS OF REFERENCE

1. The Prisons and Probation Ombudsman is wholly independent of the National Offender Management Service (including HM Prison Service and Probation Services in England and Wales), the UK Border Agency and the Youth Justice Board¹. The Ombudsman is appointed following an open competition by the Secretary of State for Justice.
2. The Ombudsman's office is operationally independent of, though it is sponsored by, the Ministry of Justice. The Ombudsman reports to the Secretary of State. A framework document sets out the respective roles and responsibilities of the Ombudsman, the Secretary of State and the Ministry of Justice and how the relationship between them will be conducted.

Reporting Arrangements

3. The Ombudsman will publish an annual report, which the Secretary of State will lay before Parliament. The report will include:
 - anonymised examples of complaints investigated;
 - recommendations made and responses received;
 - selected anonymised summaries of fatal incidents investigations;
 - a summary of the number and type of investigations mounted and the office's success in meeting its performance targets;
 - a summary of the costs of the office.
4. The Ombudsman may publish additional reports on issues relating to his investigations, which the Secretary of State will lay before Parliament upon request. The Ombudsman may also publish other information as considered appropriate.

¹ NOMS (including HM Prison Service and Probation Services in England and Wales) and UKBA are referred to throughout the Terms of Reference as 'the authorities'

Disclosure

5. The Ombudsman is subject to the Data Protection Act 1998 and the Freedom of Information Act 2000.
6. In accordance with the practice applying throughout government departments, the Ombudsman will follow the Government's policy that official information should be made available unless it is clearly not in the public interest to do so.
7. The Ombudsman and HM Inspectorates of Prisons, Probation and Court Administration, and the Chief Inspector of the UK Border Agency, will work together to ensure that relevant information, knowledge and expertise is shared, especially in relation to conditions for prisoners, residents and detainees generally. The Ombudsman may also share information with other relevant specialist advisers, the Independent Police Complaints Commission, and investigating bodies, to the extent necessary to fulfil the aims of an investigation.
8. The Head of the relevant authority (or the Secretary of State for Justice, Home Secretary or the Secretary of State for Children, Schools and Families where appropriate) will ensure that the Ombudsman has unfettered access to the relevant documents. This includes classified material and information entrusted to that authority by other organisations, provided this is solely for the purpose of investigations within the Ombudsman's Terms of Reference.
9. The Ombudsman and staff will have access to the premises of the authorities in remit, at reasonable times as specified by the Ombudsman, for the purpose of conducting interviews with employees and other individuals, for examining documents (including those held electronically), and for pursuing other relevant inquiries in connection with investigations within the Ombudsman's Terms of Reference. The Ombudsman will normally arrange such visits in advance.

Complaints

Persons able to complain

10. The Ombudsman will investigate complaints submitted by the following categories of person:
 - i) prisoners who have failed to obtain satisfaction from the prison complaints system and whose complaints are eligible in other respects;
 - ii) offenders who are, or have been, under probation supervision, or accommodated in Approved Premises, or who have had reports prepared on them by NOMS and who have failed to obtain satisfaction from the probation complaints system and whose complaints are eligible in other respects;
 - iii) immigration detainees who have failed to obtain satisfaction from the UKBA complaints system and whose complaints are eligible in other respects.

11. The Ombudsman will normally act on the basis only of eligible complaints from those individuals described in paragraph 10 and not on those from other individuals or organisations. However, the Ombudsman has discretion to accept complaints from third parties on behalf of individuals described in paragraph 10, where the individual concerned is either dead or unable to act on their own behalf.

Matters subject to investigation

12. The Ombudsman will be able to investigate:
 - i) decisions and actions (including failures or refusals to act) relating to the management, supervision, care, and treatment of prisoners in custody, by prison staff, people acting as agents or contractors of NOMS and members of the Independent Monitoring Boards, with the exception of those excluded by paragraph 14. The Ombudsman's Terms of Reference thus include contracted out prisons, contracted out services including escorts, and the actions of people working in prisons but not employed by NOMS;

- ii) decisions and actions (including failures or refusals to act) relating to the management, supervision, care and treatment of offenders under probation supervision by NOMS or by people acting as agents or contractors of NOMS in the performance of their statutory functions including contractors and those not excluded by paragraph 14;
- iii) decisions and actions (including failures or refusals to act) in relation to the management, supervision, care and treatment of immigration detainees and those held in short term holding facilities by UKBA staff, people acting as agents or contractors of UKBA, other people working in immigration removal centres and members of the Independent Monitoring Boards, with the exception of those excluded by paragraph 14. The Ombudsman's Terms of Reference thus include contracted out establishments, contracted out services including escorts, and the actions of contractors working in immigration detention accommodation but not employed by UKBA.

Further provisions on matters subject to investigation

- 13. The Ombudsman will be able to consider the merits of matters complained of as well as the procedures involved.
- 14. The Ombudsman may not investigate complaints about:
 - i) policy decisions taken by a Minister and the official advice to Ministers upon which such decisions are based;
 - ii) the merits of decisions taken by Ministers, save in cases which have been approved by Ministers for consideration;
 - iii) actions and decisions (including failures or refusals to act) in relation to matters which do not relate to the management, supervision, care and treatment of the individuals described in paragraph 10 and outside the responsibility of NOMS, UKBA and the Youth Justice Board. This exclusion includes complaints about conviction, sentence, immigration status, reasons for immigration detention or the length of such detention, and the decisions and recommendations of the judiciary, the police, the Crown Prosecution Service, and the Parole Board and its Secretariat;

- iv) cases currently the subject of civil litigation or criminal proceedings; and
- v) the clinical judgement of medical professionals.

Eligibility of Complaints

15. The Ombudsman may decide not to accept a complaint otherwise eligible for investigation, or not to continue any investigation, where it is considered that no worthwhile outcome can be achieved or the complaint raises no substantial issue.
16. Where there is some doubt or dispute as to the eligibility of a complaint, the Ombudsman will inform NOMS, UKBA, or the Youth Justice Board of the nature of the complaint and, where necessary, NOMS, UKBA or the Youth Justice Board will then provide the Ombudsman with such documents or other information as the Ombudsman considers are relevant to considering eligibility.
17. Before putting a grievance to the Ombudsman, a complainant must first seek redress through appropriate use of the prison, probation or UKBA complaints procedures.
18. Complainants will have confidential access to the Ombudsman and no attempt should be made to prevent a complainant from referring a complaint to the Ombudsman. The cost of postage of complaints to the Ombudsman by prisoners, detainees and trainees will be met by the relevant authority.
19. If a complaint is considered ineligible, the Ombudsman will inform the complainant and explain the reasons, normally in writing.

Time Limits

20. The Ombudsman will consider complaints for possible investigation if the complainant is dissatisfied with the reply from NOMS or UKBA or receives no final reply within six weeks (or 45 working days in the case of complaints relating to probation matters).
21. Complainants submitting their case to the Ombudsman must do so within three calendar months of receiving a substantive reply from the relevant authority.

22. The Ombudsman will not normally accept complaints where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts and submitting their case to the Ombudsman, unless the delay has been the fault of the relevant authority and the Ombudsman considers that it is appropriate to do so.
23. Complaints submitted after these deadlines will not normally be considered. However, the Ombudsman has discretion to investigate those where there is good reason for the delay, or where the issues raised are so serious as to override the time factor.

Outcome of the Ombudsman's investigation

24. It will be open to the Ombudsman in the course of a complaint to seek to resolve the matter in whatever way the Ombudsman sees most fit, including by mediation.
25. The Ombudsman will reply in writing to all those whose complaints have been investigated and advise them of any recommendations made. A copy will be sent to the relevant authority.
26. Where a formal report is to be issued on a complaint investigation, the Ombudsman will send a draft to the Head of the relevant authority in remit to allow that authority to draw attention to points of factual inaccuracy, and to confidential or sensitive material which it considers ought not to be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations. The relevant authority may also use this opportunity to say whether the recommendations are accepted.
27. The Ombudsman may make recommendations to the authorities within remit, the Secretary of State for Justice, the Home Secretary or the Secretary of State for Children, Schools and Families, or to any other body or individual that the Ombudsman considers appropriate given their role, duties and powers.
28. The authorities within remit, the Secretary of State for Justice, the Home Secretary or the Secretary of State for Children, Schools and Families will normally reply within four weeks to recommendations from the Ombudsman. The Ombudsman should be

informed of the reasons for any delay. The Ombudsman will advise the complainant of the response to the recommendations.

Fatal Incidents

29. The Ombudsman will investigate the circumstances of the deaths of:
- i. prisoners and trainees (including those in Young Offender Institutions and Secure Training Centres). This includes people temporarily absent from the establishment but still in custody (for example, under escort, at court or in hospital). It generally excludes people who have been permanently released from custody;
 - ii. residents of Approved Premises (including voluntary residents);
 - iii. residents of immigration reception and removal centres, short term holding centres and persons under managed escort;
 - iv. people in court premises or accommodation who have been sentenced to or remanded in custody.

However, the Ombudsman will have discretion to investigate, to the extent appropriate, other cases that raise issues about the care provided by the relevant authority in respect of (i) to (iii) above.

30. The Ombudsman will act on notification of a death from the relevant authority and will decide on the extent of the investigation, depending on the circumstances of the death. The Ombudsman's remit will include all relevant matters for which NOMS, UKBA and the Youth Justice Board are responsible (except for Secure Children's Homes in the case of the YJB), or would be responsible if not contracted elsewhere. It therefore includes services commissioned from outside the public sector.
31. The aims of the Ombudsman's investigations are to:
- establish the circumstances and events surrounding the death, especially regarding the management of the individual by the relevant authority or authorities within remit, but including relevant outside factors;